

Mani Sheik (SBN 245487)
Kimya Liaghat (SBN 328730)
SHEIK LAW, INC.
526 Third St., Ste. A
San Rafael, CA 94901
Tel: (415) 205-8490
Email: mani@sheiklaw.us
Email: kimya@sheiklaw.us

Attorneys for Plaintiffs
Wingsail Holdings, LLC and
Yunfei “Kristy” Bai

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

WINGSAIL HOLDINGS, LLC, a
Washington Corporation, and
YUNFEI “KRISTY” BAI, an
individual,

Plaintiffs,

v.

ANDREW POLSKY, an individual,
and SEFED, a California
Corporation, and DOES 1 through
10,

Defendants.

Case No. 8:23-CV-02398-JWH-DFM

SECOND AMENDED COMPLAINT

- 1. Breach of Fiduciary Duty**
- 2. Constructive Fraud (Cal. Civ. Code § 1573)**
- 3. Fraud (Cal. Civ. Code § 1710)**
- 4. Promissory Estoppel/Waiver**
- 5. Rescission and Declaratory Relief**
- 6. Conversion**
- 7. Theft – Cal. Pen. Code § 496(c)**
- 8. Restoration of Property Pursuant to Cal. Civ. Code § 1712**
- 9. Unjust Enrichment/ Constructive Trust**
- 10. Accounting**
- 11. Unfair, Unlawful, and Fraudulent Business Practices (Cal. Bus. & Prof. Code § 17200 et seq.)**

DEMAND FOR JURY TRIAL

1 Plaintiffs Wingsail Holdings, LLC (“Wingsail”) and Yunfei (“Kristy”) Bai (“Bai”
2 and, with Wingsail, “Plaintiffs”) hereby file this Second Amended Complaint against
3 Andrew Polsky (“Polsky”) and SEFED, a California corporation, alleging as follows.

4 **I. JURISDICTION AND VENUE**

5 1. This Court has subject matter jurisdiction over Plaintiffs’ state-law claims
6 pursuant to 28 U.S.C. section 1332 because there is complete diversity of citizenship
7 between Wingsail (Washington) and Bai (foreign national), on the one hand, and Polsky
8 (California) and SEFED (California) on the other hand, and more than \$75,000 is in
9 controversy in this action, exclusive of interest and costs.

10 2. Venue is proper in this Court pursuant to 28 U.S.C. section 1391(b) because
11 a substantial part of the events or omissions giving rise to the claims occurred in this
12 District, or a substantial part of the property that is the subject of the action is situated in
13 this District, and because at least one of the Defendants resides in this judicial district.

14 **II. NATURE OF THE ACTION**

15 3. Polsky, individually and through SEFED (as well as a complex network of
16 corporate entities and holding companies designed to obscure true ownership), engaged in
17 a series of deceitful actions to induce Wingsail—and its 100% owner, Bai—to invest nearly
18 \$1 million in Alter Management, LLC (“Alter”), a startup business that Polsky controls,
19 promising that Wingsail would ultimately own 65% of Alter, as well as receive annual
20 profits and distributions from Alter on a priority basis amounting to at least 8% annual
21 interest on Wingsail’s outstanding principal investment, which would accrue and be paid
22 when Alter was financially able to make the distributions. However, when Polsky made
23 these representations to induce Wingsail to invest, he never intended to make Wingsail the
24 owner of Alter. Instead, Polsky undertook a string of actions and corporate “shell game”
25 to prevent Wingsail from ultimately receiving the business interest it bargained for. Polsky
26 unlawfully took control of Wingsail’s 65% interest in a business that has become extremely
27 successful and profitable, with an approximate present net worth believed to be in excess
28 of \$45 Million. Wingsail has not been paid the distributions that are owed to it. Polsky

1 currently holds all of the subject business property and profits in constructive trust for the
2 benefit of Wingsail and Bai. Wingsail and Bai thus seek to vindicate their rights and bring
3 claims based on breach of fiduciary duty, fraud, conversion, unjust enrichment, unfair
4 business practices, theft, rescission, for an accounting and other legal equitable claims.

5 **III. PARTIES**

6 4. Plaintiff Wingsail is a Washington State limited liability company with its
7 principal place of business in the State of Washington.

8 5. Wingsail is 100% owned by Bai, who is a foreign national.

9 6. Defendant Andrew Polsky (“Polsky”) is an individual and resident of the State
10 of California, County of Orange.

11 7. Defendant SEFED, formed on or about November 13, 2018, is a California
12 corporation with its principal place of business located at 3857 Birch Street, Suite 12,
13 Newport Beach, CA 92660. Polsky is SEFED’s “Organizer,” “Chief Executive Officer,”
14 “Secretary,” “Chief Financial Officer,” and “Director,” and is also an owner.

15 8. At all times relevant to the allegations of this amended complaint, Defendants,
16 and each of them, were aiding and abetting each other and/or acting as the agents, servants,
17 employees, alter egos, or successors or predecessors in interest of each of the other
18 Defendants, and were acting within the course and scope of such relationship with the
19 knowledge, consent, permission, authorization, and ratification, either express or implied,
20 of each of the other Defendants in performing the acts or omitting to act as alleged in this
21 amended complaint.

22 **IV. GENERAL ALLEGATIONS**

23 9. Beginning in approximately October 2013, Polsky was President of MCAP
24 Holdings LLC (“MCAP”), which offers foreign visa investment services to foreign
25 nationals seeking to obtain a visa through one of the various foreign investment-based
26 programs of the U.S. Government (e.g., EB-5 and E2). Fu-Shen “Max” Chang (“Chang”)
27 was Polsky’s business partner in and the Manager of MCAP.

28 10. Polsky was introduced to Bai (and Wingsail) through Chang in or around

1 April 2018. Polsky was seeking capital to enter the business of behavioral and mental
2 healthcare and drug rehabilitation. Chang had built a relationship of trust with Bai such
3 that Bai could and did trust Polsky, in reliance upon Polsky being Chang's business partner
4 and President of MCAP.

5 11. Polsky promised Bai that she would receive (through Wingsail) a significant
6 majority ownership share in Alter and thereby be eligible to obtain a U.S. visa through the
7 E2 visa program, which requires the foreign investor to maintain a majority interest in the
8 U.S. company (in this case, Alter). Polsky promised Bai that in exchange for her seed
9 capital invested in Alter, Bai would receive 65% of the membership interest in Alter, along
10 with all the rights and entitlements that accompany such a majority interest, as required by
11 the E2 visa program, as well as annual profits and distributions from Alter on a priority
12 basis amounting to at least 8% annual interest on Bai's outstanding principal investment,
13 which would accrue and be paid when Alter was financially able to make the distributions.
14 Based on Polsky's representations, Bai was expecting that Wingsail would receive the
15 membership interest in Alter that Polsky was promising, as well as be paid the annual
16 distribution payments Polsky was promising once Alter became financially able to make
17 the payments. Bai was also expecting that, because of and through her majority interest in
18 Alter, she could apply for an E2 visa.

19 12. On or about July 27, 2018, Polsky, acting individually and on behalf of Alter
20 as its principal, agent, and manager, drafted and presented Chang and Bai an Alter
21 Operating Agreement, which provided that Wingsail would be the sole seed capital
22 contributor to Alter and would receive a 65% membership interest in Alter, including all
23 the rights and entitlements that accompany such a majority interest, as required by the E2
24 visa program. Polsky, leveraging Chang's position of trust with Bai, also promised
25 Wingsail and Bai annual profits and distributions from Alter on a priority basis amounting
26 to at least 8% annual interest on Wingsail's outstanding principal investment, which would
27 accrue until Alter was financially able to make the distributions. However, at the time
28 Polsky made these representations and promises to induce Bai to invest in Alter, he never

1 intended on keeping his promises to Plaintiffs, but instead intended to get Plaintiffs to fund
2 the startup and eventually take over their ownership of Alter.

3 13. In or about July 2018, based on Polsky's promises and assurances, Wingsail
4 (through Bai) entered into a Management and Investments Agreement with MCAP (of
5 which Polsky was a member and officer—President) for MCAP to manage Wingsail's
6 investments in Alter ("MCAP Agreement"). By the end of March 2019, Wingsail had
7 invested more than \$730,000 into Alter through Polsky. In late 2018, Polsky asked Chang
8 to show Bai the December 23, 2018 "final version" of the Alter Operating Agreement
9 ("Final Alter Operating Agreement") to have Wingsail invest more capital in Alter. At
10 Polsky's direction, Chang showed Bai the Final Alter Operating Agreement and convinced
11 her to have Wingsail invest additional funds in the Alter startup. Polsky also told Bai
12 directly that the Final Alter Operating Agreement concerning Alter's membership interest
13 in Alter and attendant annual distributions had been finalized, and that Wingsail should
14 continue to invest with confidence, even providing updates regarding the status and
15 viability of the business. Wingsail and Bai relied on Polsky's statements and assurances
16 and the Final Alter Operating Agreement to continue investing in the startup.

17 14. In August 2019, Polsky informed Wingsail that an immediate additional cash
18 infusion would be required from Plaintiffs or the business would go under and they would
19 lose their entire investment. Polsky informed Bai that if she did not tender an additional
20 \$200,000-\$300,000 by the end of August 2019, Alter would go out of business.
21 Importantly, Polsky and SEFED (a company he 100% controls) had not invested any
22 capital of his or its own into Alter and did not stand to lose any investment. Bai informed
23 Polsky she would not be able to secure such large amounts so quickly and would need
24 additional time.

25 15. On or about August 16, 2019, Polsky proposed that he would loan \$100,000
26 to Wingsail so that it could loan the money to Alter immediately. Polsky would effectuate
27 this loan through SEFED, not personally. Thus, SEFED, which Polsky had incorporated
28 just a few months earlier, agreed to the loan in exchange for Wingsail's promises to tender

the \$100,000 to Alter immediately and also to loan an additional \$200,000 to Alter by August 29 (the “SEFED loan”). Polsky created a Pledge Agreement whereby Wingsail staked its entire interest in Alter as collateral, in favor of SEFED. The SEFED loan and the Pledge Agreement are collectively referred to as the SEFED Loan Agreements.

16. Plaintiffs were concerned they could not provide so much cash so quickly (within two weeks). Polsky repeatedly assured Plaintiffs that the deadline was not a hard deadline and Plaintiffs could wire the funds after August 31 with no fear of breaching the SEFED Loan Agreements. Polsky even sent Chang a text message on August 15, 2019, confirming, “I don’t want to take her equity. . . At all.” Polsky claimed the Pledge Agreement was simply a safety net for him and that he had no intention to affect Plaintiffs’ equity interests in Alter so long as Plaintiffs made the additional investment. Throughout 2019, Polsky confirmed several times that Plaintiffs could have extra time to make the additional \$200,000 transfer, and that he would not take action to close on the Pledge Agreement.

17. In October 2019, Plaintiffs transferred approximately \$200,000 for Alter, as proposed and demanded by Polsky. Plaintiffs wired the funds directly into an account controlled by Polsky and Alter. Plaintiffs understood and believe this money would be used to repay the SEFED loan. Polsky accepted this payment on behalf of Alter and SEFED without question or comment.

18. Relying on Polsky’s false promises and believing them to be true at the time, Plaintiffs delivered a total of \$931,820.00 to Polsky or accounts controlled by Polsky or Alter or other Alter entities, as follows:

<u>Date</u>	<u>Amount</u>	<u>Cumulative Total</u>
08/01/2018	\$ 115,000.00	\$ 115,000.00
11/02/2018	\$ 46,000.00	\$ 161,000.00
11/21/2018	\$ 20,000.00	\$ 181,000.00
12/13/2018	\$ 256,000.00	\$ 437,000.00

01/10/2019	\$ 149,880.00	\$ 586,880.00
03/01/2019	\$ 119,980.00	\$ 706,880.00
03/27/2019	\$ 24,980.00	\$ 731,840.00
10/25/2019	\$ 199,980.00	\$ 931,820.00

19. From and after the October 2019 additional \$200,000 transfer by Wingsail (less a \$20 wire transaction fee), Defendants continued to operate business as usual. Polsky and Bai had numerous communications about the Alter business, cashflow, operations, etc.—all the normal and customary subjects that are commonly discussed between an owner of a business (Bai) and contracted management (Polsky). At no time after the final, October 2019 transfer did Polsky ever assert that Alter required additional funds of any kind, much less that the company’s finances were so dire that it may not stay in business. Nor did Polsky ever state after that date that additional funding was required or that Alter still needed Plaintiffs to make the second cash transfer contemplated in the SEFED Loan Documents. To the contrary, Polsky stated that business was doing well and Alter was making substantial profit.

20. Defendants never provided Plaintiffs notice of any purported default on the SEFED loan, and never informed Plaintiffs that they had taken or would take Wingsail’s interest in Alter. Nor did Defendants ever provide an opportunity to cure any alleged default. To the contrary, Polsky continued to assure Plaintiffs during that their investment in Alter was safe, even inquiring about the status of Bai’s E2 visa application (which would not be available to Bai if she was no longer majority owner of Alter), upon which assurances Plaintiffs relied, to their detriment.

21. For example, on October 8, 2020, Bai texted Polsky to ask “How is the Business?” and to get an update. Polsky could have used the occasion to inform (if he believed Plaintiffs did not already know) or confirm (if he believed Plaintiffs already knew) that Plaintiffs had purportedly defaulted on the SEFED loan and/or to inform Plaintiffs that, through SEFED, Defendants had already taken Wingsail’s interest in Alter. But Polsky did not do so. Instead, he texted back to Bai that “Business is going ok,” that

1 he was working to produce additional revenue opportunities and raise money which “will
2 make the existing business more profitable so we can return capital to you hopefully sooner
3 than later.” Polsky also asked Bai “Do you intend to file your e2?” Bai responded one
4 minute later and noted that she had heard from Alter’s accountant that Wingsail’s
5 management role in Alter may have changed, without her knowledge or consent.

6 22. Polsky again failed to inform or confirm that Plaintiffs had purportedly
7 defaulted on the SEFED loan and that Defendants had taken Wingsail’s interest in Alter.
8 Instead, Polsky replied, within one minute of Bai’s text, that “we have to do two things for
9 you[.] Have to pay you back, and get you your E2 if you want it.” Bai responded “Yes.”
10 Upon information and belief, Polsky’s statement and assurance were meant to quell any
11 suspicion of wrongdoing Bai may have had and to provide her (and, through her, Wingsail)
12 sufficient assurances so that Plaintiffs would not investigate the matter further. Polsky’s
13 statements throughout these texts were false as he had no intention of giving Wingsail its
14 shares back or of paying back Plaintiffs. Indeed, Defendants have done neither to this day.
15 And Polsky could not “get” Bai her E2 visa as of October 8, 2020, which she confirmed
16 she wanted, because Defendants had already taken for themselves Wingsail’s majority
17 ownership interest in Alter, which is a prerequisite for Bai “getting” an E2 visa.

18 23. As another example, on February 3, 2021, Polsky sent Bai a text assuring her
19 that she would receive the distributions she was promised. He also assured Bai that her E2
20 visa benefits were safe, which meant that, to be a true statement, Wingsail had to have
21 continued to own the 65% membership interest in Alter at that time, since continued
22 ownership of a majority interest in a U.S. company is a requirement for a E2 visa, which
23 Polsky knew. Specifically, Polsky texted to Bai: “I’ve always been committed to getting
24 you your money back and your E2 (if you decide you want it).” At or around this time
25 (e.g., on or before February 3, 2021), Polsky also made similar statements to Chang via
26 telephone to assure Chang that his and Wingsail’s interests were safe and secure, as Polsky
27 had initially promised when the securing the seed capital back in 2018. Polsky’s statements
28 were false, however, as he had no intention of giving Wingsail its shares, instead having

1 already taken steps to keep the Alter membership interest for himself. And Bai's E2 visa
2 benefits were no longer safe at that time because Polsky and SEFED had already taken
3 steps to take for themselves Wingsail's majority ownership interest in Alter.

4 24. As late as August 31, 2021, Polsky emailed Chang promising that the Alter
5 membership would be formally assigned and transferred to Wingsail, as promised. Soon
6 thereafter, Polksy and Chang spoke on the phone about this issue, and Polksy told Chang
7 to assure Plaintiffs that their ownership interest in Alter was protected, which Chang did
8 at Polsky's direction, and on which Plaintiffs relied. Polsky's statements were false,
9 however, as he had no intention of giving Wingsail its shares, instead having already taken
10 steps to keep the Alter membership interest for himself.

11 25. Unbeknownst to Plaintiffs, Polsky had already—on paper at least—
12 transferred to himself and SEFED the Alter equity by virtue of a document entitled
13 "Agreement to Accept Collateral In Full Satisfaction of Obligations," which Polsky created
14 and asked Chang to sign on behalf of Wingsail ("Acknowledgment Document"). The
15 Acknowledgment Document was purportedly signed on April 6, 2020, but backdated to be
16 "effective December 31, 2019." On information and belief, Chang was not aware of the
17 effect of the Acknowledgement Document and merely relied upon his business partner's
18 representations that his signature was needed.

19 26. Defendants have claimed the additional \$200,000 transfer was used to repay
20 a prior short-term loan, procured by Polsky, that Wingsail took out with a Jordan Mallin
21 in or around April 2019 for \$150,000. On information and belief, Mallin is a close personal
22 friend of Polsky. Plaintiffs are unaware whether the Mallin loan was ever actually provided
23 to Alter, much less whether the Mallin loan was ever actually repaid.

24 27. By October 31, 2021, the Alter startup had become tremendously successful,
25 as it was projected to be worth over \$45 Million by the end of 2023, and over \$65 Million
26 by the end of 2026.

27 28. Due in large part to being unable to prove her ownership interest in Alter, Bai
28 has lost the ability to apply for an E2 visa through her ownership in Alter, which was the

1 entire purpose for Bai of investing in Alter through MCAP. Further, Plaintiffs have never
2 received any interest or return of their capital. On information and belief, Alter has retained
3 all the approximately \$931,820.00 invested, as well as accrued profit, interest, distribution,
4 retained earnings, and other valuable property interest in Alter, including by creating a
5 variety of corporate entities and financial structures designed to obscure and hide the Alter
6 assets invested in by Bai.

7 **V. DISCOVERY RULE & FRAUDULENT CONCEALMENT**

8 29. As part of his scheme to take for himself the entire Alter investment made by
9 Plaintiffs, Polsky, and through him, SEFED, actively misled, made material
10 misrepresentations to, and concealed material information from Bai, Chang, and Wingsail.
11 Defendants' misrepresentations and concealment led Plaintiffs to proceed under the false
12 impression that Wingsail's membership interest in Alter and distributions owed by Alter
13 were secure, and led Bai to proceed under the false impression that because of and through
14 her majority interest in Alter, she retained the ability to apply for an E2 visa. It was not
15 until October 2020 that Bai first suspected that Wingsail's management role in Alter may
16 have changed, without her knowledge or consent. Even then, though, when Polsky
17 communicated with Bai about the business, he failed to inform Plaintiffs that Defendants
18 had already taken for themselves Wingsail's majority ownership interest in Alter. Instead,
19 within one minute of Bai informing him that she had heard from Alter's accountant that
20 Wingsail's management role may have changed (without Plaintiffs' knowledge or
21 consent), Polsky responded: "we have to do two things for you[.] Have to pay you back,
22 and get you your E2 if you want it." As such, Polsky continued to perpetuate Defendants'
23 misconduct through further and new misrepresentations with the intent that Plaintiffs
24 would not investigate his misconduct. Polsky's misrepresentations and false assurances
25 continued in 2021, through other statements he made to Bai and Chang, as detailed above.
26 Therefore, Plaintiffs could not have learned of Defendants' misconduct during this time
27 because Polsky had actively concealed it as part of his scheme. Even if Bai suspected that
28 something was amiss regarding her investment in Alter in October 2020, Plaintiffs'

1 reasonable diligence could not confirm this suspicion because Polsky, in violation of his
2 duties and the law, continued to hide the true nature of his conduct, taking advantage of
3 his position of trust with Plaintiffs by assuring Plaintiffs that he would deliver on the
4 original bargain, though he knew such was neither required or possible after Defendants
5 took Wingsail's membership interest in Alter. Polsky's ongoing failures to be candid and
6 loyal undermined Plaintiffs' ability to learn the truth. Plaintiffs did not discover and could
7 not have discovered through the exercise of reasonable diligence the true nature and full
8 scope of Defendants' misconduct until December 2022 at the earliest, thereby tolling any
9 otherwise applicable statute of limitations.

10 30. Defendants were under a continuous duty to disclose to Plaintiffs the true
11 character, quality, and nature of their tortious acts against Plaintiffs.

12 **VI. RELATION TO PRIOR CLAIMS**

13 31. Plaintiff Wingsail initially pursued crossclaims through Chang, filed on
14 September 29, 2023, in the matter of *Polsky v. Chang, et al.*, Case No. 8:23-CV-00225-
15 CJC-ADS(x) (the "Chang Action"). But based upon certain technical objections raised by
16 the counter- and cross-defendants in that case (Defendants in this case) in a motion to
17 dismiss, Wingsail pursued its own claims in this Action here (now also with its owner, Bai,
18 as a plaintiff) which overcomes those technical objections and is related to and relates back
19 to the Chang Action.

20 **CLAIMS FOR RELIEF**

21 **FIRST CLAIM FOR RELIEF**

22 **Breach of Fiduciary Duty**

23 **(By Plaintiffs Against Polsky)**

24 32. Plaintiffs reallege and incorporate by reference herein each and every material
25 allegation of the preceding paragraphs, with the same force and effect as though fully set
26 forth herein.

27 33. By virtue of his position as President of MCAP, Polsky owed Plaintiffs
28 fiduciary duties, including duties of care, loyalty, good faith, prudence, and disclosure, all

1 of which required Polsky to act in the best interests of Plaintiffs rather than his own, and
2 to disclose to Plaintiffs if/when he was not doing so. Polsky breached these duties.

3 34. Although Polsky was effectively acting in his own best interests and those of
4 SEFED, which he 100% controls, Plaintiffs made their investments through MCAP, and
5 Plaintiffs reasonably understood Polsky owed Plaintiffs a fiduciary obligation in relation
6 to the investments they made into Alter. The genesis of Plaintiffs' relationship was through
7 engaging with and contracting with MCAP, and the overarching purpose of that
8 relationship was to assist Bai to obtain an E2 visa, which required her to be and remain a
9 majority investor in a business.

10 35. Polsky presented the SEFED Loan Agreements by telling Plaintiffs that they
11 might lose their entire investment (over \$730,000 at that time) if they did not invest further,
12 and offering to provide a short-term bridge loan on behalf of his own company, SEFED.
13 Plaintiffs understood, believed, and relied on Polsky's fiduciary obligations that Polsky
14 was acting in their best interests when he created the SEFED Loan Agreements and,
15 critically, in relation to the Pledge Agreement.

16 36. Through the MCAP Agreement, Polsky had a contractual and fiduciary duty
17 to "Maintain the assets and businesses of [Wingsail] in good standing, order and operating
18 condition" and not to subject them to onerous obligations to a company he wholly
19 controls—i.e., SEFED and the SEFED Loan Agreements.

20 37. Polsky breached his fiduciary duties to Plaintiffs by structuring the SEFED
21 loan agreement in a manner that would not protect their interests, but instead would benefit
22 him personally. He repeatedly assured Plaintiffs that he had no interest in executing on the
23 Pledge Agreement, and throughout the time period after Plaintiffs made the additional
24 \$200,000 investment in October 2019, Polsky interacted with Plaintiffs repeatedly without
25 ever calling out any alleged breach by Wingsail of the SEFED Loan Agreements or his
26 intention to take Plaintiffs' equity in Alter. At the very least, Polsky's dual (or even tripart)
27 role in the transaction in and of itself was a conflict of interest and improper self-dealing,
28 which constituted a breach of fiduciary duty.

38. As a result of Polsky's breach of fiduciary obligations, Plaintiffs lost their equity interests in Alter, which has grown to a substantial business worth millions of dollars.

39. Polsky's conduct in breach of various fiduciary duties was a direct and proximate cause of the harm suffered by Plaintiffs, in an amount to be proven at trial, currently believed to be an amount in excess of \$30.5 million based on Plaintiffs' 65% interest in Alter. Further, Bai lost the ability to pursue a E2 visa application through the Alter business because she was no longer an "owner" of the business, let alone the majority owner, after Defendants usurped Wingsail's ownership interest for themselves. Defendants took that away, which was Plaintiffs' entire purpose of engaging with MCAP and making the almost \$1 Million investment.

40. Defendants undertook the aforesaid acts intentionally and with conscious disregard of the rights of Plaintiffs, and did so with fraud, oppression, and/or malice, as detailed herein, so as to justify an award of punitive damages in an amount sufficient to deter such wrongful conduct in the future. Therefore, Plaintiffs are also entitled to punitive damages against Defendants in an amount to be determined at trial.

41. As a result of Defendants' conduct as alleged herein, Plaintiffs are entitled to attorneys' fees, costs, and interest.

SECOND CLAIM FOR RELIEF

Constructive Fraud (Cal. Civ. Code § 1573)

(By Plaintiffs Against All Defendants)

42. Plaintiffs reallege and incorporate by reference herein each and every material allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

43. Polsky owed Plaintiffs a fiduciary duty as alleged above. In addition, by virtue of Polsky's position as President of MCAP and having been introduced to Polsky by Chang as part of MCAP's effort to assist Bai to obtain an E2 visa, Polsky and Bai were in effect in a confidential relationship.

1 44. Under California law, “constructive fraud” is any breach of duty that, without
2 fraudulent intent, gains an advantage to the person at fault by misleading another to his
3 prejudice.

4 45. The source and genesis of the relationship between Polsky and Plaintiffs was
5 MCAP. Polsky was neither a stranger nor an arms-length third party to the MCAP
6 Agreement. He was the President of MCAP, which had agreed with Plaintiffs to act in their
7 best interests. Moreover, the overarching purpose of that relationship was to assist Bai to
8 obtain an E2 visa, which required her to be and remain a majority investor in a business.

9 46. Polsky presented the SEFED Loan Agreements by telling Plaintiffs that they
10 might lose their entire investment (over \$730,000 at that time) if they did not invest further,
11 and offering to provide a short-term bridge loan on behalf of his own company, SEFED.
12 Plaintiffs understood, believed, and relied on Polsky’s fiduciary obligations that Polsky
13 was acting in their best interests when he created the SEFED Loan Agreements and,
14 critically, in relation to the Pledge Agreement.

15 47. Through the MCAP Agreement, Polsky had a contractual and fiduciary duty
16 to “Maintain the assets and businesses of [Wingsail] in good standing, order and operating
17 condition” and not to subject them to onerous obligations to a company he wholly
18 controls—i.e., SEFED and the SEFED Loan Agreements.

19 48. Polsky had an obligation to inform Plaintiffs that he was acting primarily to
20 profit himself and not them by structuring a loan and pledge agreement that would result
21 in Plaintiffs losing their entire investment in Alter and E2 visa benefit. Polsky also had an
22 obligation to inform Plaintiffs that he would cause SEFED to close on the Pledge
23 Agreement and take control of Alter.

24 49. Further, even after the so-called “Acknowledgment Document” had been
25 signed, Polsky never informed Plaintiffs that they no longer had any investment in Alter
26 and that, as a result, Bai was not longer eligible for, and could thus not apply for, an E2
27 VISA. Indeed, as detailed in the factual allegations above, in October 2020 and several
28 times in 2021 (e.g., February and August), Polsky assured Bai and Chang that Plaintiffs

1 would receive the distributions they were promised and that Bai's E2 visa benefits were
2 safe. Polsky's statements were false, however, as he had no intention of giving Wingsail
3 back its shares, instead having already taken steps to keep the Alter membership interest
4 for himself, and Bai's E2 visa benefits were no longer safe at any time he made those
5 misrepresentations because Polsky and SEFED had already taken steps to take for
6 themselves Wingsail's majority ownership interest in Alter.

7 50. Plaintiffs understood, believed, and relied on Polsky's fiduciary obligations
8 that Polsky was acting in their best interests when he created the SEFED Loan Agreements
9 and, critically, in relation to the Pledge Agreement.

10 51. Additionally, Plaintiffs reasonably believed that tendering the additional
11 funds in October 2019 would effectively pay SEFED and Polsky back for their loan. Polsky
12 never informed Plaintiffs to the contrary, even though Polsky and Bai discussed the
13 business multiple times over multiple years after the SEFED Loan Agreements were signed
14 (e.g., in October 2020 and February 2021). Instead, Polsky's interactions with Plaintiffs
15 after the SEFED Loan Agreements were signed were as if, and reasonably led Plaintiffs to
16 believe that, Wingsail still owned 65% of Alter. Indeed, Polsky continued to assure
17 Plaintiffs that their investment was safe and that Polsky needed to and would pay Plaintiffs
18 back.

19 52. Defendants now claim that the October 2019 transfer of \$200,000 was
20 actually used to pay off an earlier, purported loan to Polsky's close personal friend, Mallin,
21 when it could have instead been used to pay SEFED (and Polsky) back, if indeed such a
22 loan with Mallin existed. Polsky alone determined how to use the additional \$200,000 cash
23 infusion Plaintiffs made in October 2019, to his benefit and Plaintiffs' detriment.

24 53. In stating to Chang (who was manager of Wingsail) that he (Polsky) would
25 not "take her equity . . . At all" and other assurances detailed above, Polsky intended to
26 cause Wingsail and Bai to believe SEFED would not close on the pledge agreement, or at
27 minimum that Polsky would provide some notification that he and SEFED would do so.

28 54. As a result of Defendants' conduct, Plaintiffs lost their equity interests in

1 Alter, which has grown to a substantial business worth millions, in an amount to be proven
2 at trial, currently believed to be an amount in excess of \$30.5 million based on Plaintiffs’
3 65% interest in Alter. Further, Bai lost the ability to pursue a E2 visa application through
4 the Alter business because she was no longer an “owner” of the business, let along the
5 majority owner. Polsky and SEFED took that away, which was the entire purpose of
6 engaging with MCAP and making the almost \$1 Million investment.

7 55. Defendants’ conduct resulting in constructive fraud were a direct and
8 proximate cause of the harm suffered by Plaintiffs.

9 56. Defendants undertook the aforesaid acts intentionally and with conscious
10 disregard of the rights of Plaintiffs, and did so with fraud, oppression, and/or malice, as
11 detailed herein, so as to justify an award of punitive damages in an amount sufficient to
12 deter such wrongful conduct in the future. Therefore, Plaintiffs are also entitled to punitive
13 damages against Defendants in an amount to be determined at trial.

14 57. As a result of Defendants’ conduct as alleged herein, Plaintiffs are entitled to
15 attorneys’ fees, costs, and interest.

16 **THIRD CLAIM FOR RELIEF**

17 **Fraud (Cal. Civ. Code § 1710)**

18 **(By Plaintiffs Against All Defendants)**

19 58. Plaintiffs reallege and incorporate by reference herein each and every material
20 allegation of the preceding paragraphs, with the same force and effect as though fully set
21 forth herein.

22 59. Defendants engaged in fraud under California law, specifically Cal. Civ. Code
23 §§ 1572 and 1710, by and through their statements and conduct, as detailed above.
24 Specifically, Polsky repeatedly stated that the repayment obligation in the SEFED Loan
25 Agreements would not be enforced and that Defendants would not “take her equity . . . At
26 all,” meaning Wingsail and Bai’s interests in Alter. Polsky made such statements on behalf
27 of, at minimum, SEFED, a corporation Polsky owns and wholly controls, but also for his
28 own purposes given that only Polsky stood to benefit from the taking. Contrary to his

1 statements, Polsky in fact did intend to execute on the collateral Pledge Agreement as part
2 of a broader scheme to take for himself the entire Alter investment made by Plaintiffs.

3 60. Wingsail and Bai, collectively and independently, reasonably relied upon
4 Polsky's statements and promises, including due to his role as President of MCAP, which
5 was managing Wingsail's investments. Wingsail and Bai had already provided \$200,000
6 in performance of the SEFED Loan Agreements, and reasonably relied on and believed
7 based on Polsky's statements and assurances, including to Bai directly, that everything was
8 going well with the investments, that there was no pressing need to repay the note to
9 SEFED. Indeed, Plaintiffs believed their \$200,000 cash infusion into Alter in October 2019
10 would be used to repay the SEFED loan itself, and were unaware that the money was
11 purportedly used to pay off an earlier loan to Polsky's close personal friend, Mallin, instead
12 (if indeed such a loan with Mallin existed) rather than being used to pay SEFED (and
13 Polsky) back. Polsky alone determined how to use the additional \$200,000 cash infusion
14 Plaintiffs made in October 2019, to his benefit and Plaintiffs' detriment.

15 61. Polsky's taking of Wingsail's Alter interests was the direct result of reliance
16 on Polsky's statements and position as President of MCAP. Plaintiffs were not informed,
17 and were not aware, that Polsky was instead secretly acting in the best interests of his own
18 company (and therefore himself, ultimately).

19 62. Plaintiffs' loss of the Alter interests has directly and proximately caused
20 substantial harm, given the business is estimated to be worth approximately \$45 million.

21 63. As a result of Defendants' conduct, Plaintiffs lost their equity interests in
22 Alter, which has grown to a substantial business worth millions, in an amount to be proven
23 at trial, currently believed to be an amount in excess of \$30.5 million based on Plaintiffs'
24 65% interest in Alter. Further, Bai lost the ability to pursue a E2 visa application through
25 the Alter business because she was no longer an "owner" of the business, let along the
26 majority owner. Polsky and SEFED took that away, which was the entire purpose of
27 engaging with MCAP and the almost \$1 Million investment.

28 64. Defendants' actions and statements constitute intentional fraud (Cal. Civ.

1 Code § 1710(1)), fraudulent concealment (§ 1710(2)), and false promise (§ 1710(3)).
2 Defendants' actions were not accidental, incidental, or otherwise unintended.

3 65. Defendants undertook the aforesaid acts intentionally and with conscious
4 disregard of the rights of Plaintiffs, and did so with fraud, oppression, and/or malice, as
5 detailed herein, so as to justify an award of punitive damages in an amount sufficient to
6 deter such wrongful conduct in the future. Therefore, Plaintiffs are also entitled to punitive
7 damages against Defendants in an amount to be determined at trial.

8 66. As a result of Defendants' conduct as alleged herein, Plaintiffs are entitled to
9 attorneys' fees, costs, and interest.

10 **FOURTH CLAIM FOR RELIEF**

11 **Promissory Estoppel/Waiver**

12 **(By Plaintiffs Against All Defendants)**

13 67. Plaintiffs reallege and incorporate by reference herein each and every material
14 allegation of the preceding paragraphs, with the same force and effect as though fully set
15 forth herein.

16 68. By making the promises and assurances outlined above, Defendants
17 effectively agreed that they, through SEFED, would not close on Pledge Agreement or,
18 alternatively, that there was no need to close on the Pledge Agreement, or, alternatively,
19 that the tender of an additional \$200,000 in October 2019 in response to the urgent request
20 for additional investment had substantially resolved the urgency such that there was no
21 need to act on the Pledge Agreement. Polsky repeatedly stated and promised that he had
22 no intent "to take her equity . . . At all," referring to Plaintiffs. Polsky also repeatedly told
23 Plaintiffs and Chang, multiple times over multiple years after the SEFED Loan
24 Agreements were signed, that business was going well and money was coming in the door,
25 thereby implying that cashflow was adequate. Indeed, on August 12, 2019, Polsky
26 communicated to Chang that there were nearly \$1 Million in account receivables coming
27 in, suggesting everybody, including Plaintiffs and Chang, could expect significant income
28 coming into the company soon.

1 69. Polsky presented the SEFED Loan Agreements by telling Plaintiffs that they
2 might lose their entire investment (over \$730,000 at that time) if they did not invest further,
3 and offering to provide a short-term bridge loan on behalf of his own company, SEFED.
4 Plaintiffs understood, believed, and relied on Polsky's fiduciary obligations that Polsky
5 was acting in their best interests when he created the SEFED Loan Agreements and,
6 critically, in relation to the Pledge Agreement.

7 70. Through the MCAP Agreement, Polsky had a contractual and fiduciary duty
8 to "Maintain the assets and businesses of [Wingsail] in good standing, order and operating
9 condition" and not to subject them to onerous obligations to a company he wholly
10 controls—i.e., SEFED and the SEFED Loan Agreements.

11 71. Polsky had an obligation to inform Plaintiffs that he was acting primarily to
12 profit himself and not them by structuring a loan and pledge agreement that would result
13 in Plaintiffs losing their entire investment in Alter and E2 visa benefit. Polsky also had an
14 obligation to inform Plaintiffs that he would cause SEFED to close on the Pledge
15 Agreement and take control of Alter.

16 72. Further, even after the so-called "Acknowledgment Document" had been
17 signed, Polsky never informed Plaintiffs that they no longer had any investment in Alter
18 and that, as a result, Bai was not longer eligible for, and could thus not apply for, an E2
19 VISA. Indeed, as detailed in the factual allegations above, in October 2020 and several
20 times in 2021 (e.g., February and August), Polsky assured Bai and Chang that Plaintiffs
21 would receive the distributions they were promised and that Bai's E2 visa benefits were
22 safe. Polsky's statements were false, however, as he had no intention of giving Wingsail
23 back its shares, instead having already taken steps to keep the Alter membership interest
24 for himself, and Bai's E2 visa benefits were no longer safe at any time he made those
25 misrepresentations because Polsky and SEFED had already taken steps to take for
26 themselves Wingsail's majority ownership interest in Alter.

27 73. Plaintiffs understood, believed, and relied on Polsky's fiduciary obligations
28 that Polsky was acting in their best interests when he created the SEFED Loan Agreements

1 and, critically, in relation to the Pledge Agreement.

2 74. Additionally, Plaintiffs reasonably believed that tendering the additional
3 funds in October 2019 would effectively pay SEFED and Polsky back for their loan. Polsky
4 never informed Plaintiffs to the contrary, even though Polsky and Bai discussed the
5 business multiple times over multiple years after the SEFED Loan Agreements were signed
6 (e.g., in October 2020 and February 2021). Instead, Polsky's interactions with Plaintiffs
7 after the SEFED Loan Agreements were signed were as if, and reasonably led Plaintiffs to
8 believe that, Wingsail still owned 65% of Alter. Indeed, Polsky continued to assure
9 Plaintiffs that their investment was safe and that Polsky needed to and would pay Plaintiffs
10 back.

11 75. Defendants now claim that the October 2019 transfer of \$200,000 was
12 actually used to pay off an earlier, purported loan to Polsky's close personal friend, Mallin,
13 when it could have instead been used to pay SEFED (and Polsky) back, if indeed such a
14 loan with Mallin existed. Polsky alone determined how to use the additional \$200,000 cash
15 infusion Plaintiffs made in October 2019, to his benefit and Plaintiffs' detriment.

16 76. In stating to Chang (who was Manager of Wingsail) that he (Polsky) would
17 not "take her equity. . . At all" and making other assurances detailed above, Polsky intended
18 to cause Wingsail and Bai to believe Defendants would not close on the Pledge Agreement,
19 or, at minimum, that Defendants would provide some notification that they would do so.

20 77. Promissory estoppel prevents Defendants from taking advantage of their
21 actions as set out above. As a result of Defendants' conduct, Plaintiffs lost their equity
22 interests in Alter, which has grown to a substantial business worth millions, in an amount
23 to be proven at trial, currently believed to be an amount in excess of \$30.5 million based
24 on Plaintiffs' 65% interest in Alter. Further, Bai lost the ability to pursue a E2 visa
25 application through the Alter business because she was no longer an "owner" of the
26 business, let alone the majority owner. Polsky and SEFED took that away, which was the
27 entire purpose of engaging with MCAP and making the almost \$1 Million investment.

28 78. As a result, Plaintiffs have been damaged in an amount to be proven at trial,

1 currently believed to be an amount in excess of \$30.5 million based on Plaintiffs' 65%
2 interest in Alter.

3 79. Defendants undertook the aforesaid illegal acts intentionally and with
4 conscious disregard of the rights of Plaintiffs, and did so with fraud, oppression, and/or
5 malice, as detailed herein, so as to justify an award of punitive damages in an amount
6 sufficient to deter such wrongful conduct in the future. Therefore, Plaintiffs are also
7 entitled to punitive damages against Counter/Cross-Defendants in an amount to be
8 determined at trial.

9 80. As a result of Defendants' conduct as alleged herein, Plaintiffs are entitled to
10 attorneys' fees, costs, and interest.

11 **FIFTH CLAIM FOR RELIEF**

12 **Rescission and Declaratory Relief**

13 **(By Plaintiffs Against All Defendants)**

14 81. Plaintiffs reallege and incorporate by reference herein each and every material
15 allegation of the preceding paragraphs, with the same force and effect as though fully set
16 forth herein, in particular the allegations alleging fraud and breach of fiduciary duty by
17 Polsky.

18 82. As set out above, Defendants' actions constitute fraud. Plaintiffs are entitled
19 to rescind each and every agreement used or that played a role in Defendants misconduct,
20 on the ground that said contracts were procured by mistake, fraud, and/or undue influence
21 pursuant to Cal. Civ. Code § 1689. Specifically:

22 a. The "Loan and Pledge Agreement" between SEFED and Wingsail,
23 dated August 16, 2019;

24 b. The "Promissory Note" between SEFED and Wingsail, dated August
25 16, 2019; and

26 c. The "Agreement to Accept Collateral In Full Satisfaction of
27 Obligations," dated April 6, 2020, but backdated to be "effective December 31, 2019."

28 83. Accordingly, Plaintiffs seek a declaration that the agreements outlined above

1 are rescinded and void *ab initio*, and further that Plaintiffs are the owner of 65% interest
2 in Alter, however currently formed or structured. Alternatively, Plaintiffs are unaware of
3 the current state of ownership interests in Alter and, upon information and belief, allege
4 that Alter has undertaken an expansion of corporate entities, shareholders, owners,
5 investors, and/or equity holders of various kinds, and therefore seek a declaration of their
6 ownership interests in Alter that were taken by Defendants.

7 84. Plaintiffs are also entitled to an order permitting Plaintiffs to return the
8 \$100,000 loaned by SEFED to Wingsail, which they stand ready, willing, and able to do if
9 and when required.

10 85. As a result of Defendants' conduct as alleged herein, Plaintiffs are entitled to
11 attorneys' fees, costs, and interest.

12 **SIXTH CLAIM FOR RELIEF**

13 **Conversion**

14 **(By Plaintiffs Against All Defendants)**

15 86. Plaintiffs reallege and incorporate by reference herein each and every material
16 allegation of the preceding paragraphs, with the same force and effect as though fully set
17 forth herein.

18 87. Plaintiffs had a property interest, including in the money delivered by
19 Plaintiffs to Polsky and Alter. Through the actions detailed herein, Defendants converted
20 that money—the specific sums set out above—for themselves, and continue to retain that
21 money improperly. Defendants' conduct, including closing on the Pledge Agreement,
22 effectuated a conversion of Plaintiffs' nearly \$1 Million tendered to invest in Alter.

23 88. To date, Defendants have not returned Plaintiffs' money, even after
24 acknowledging their obligation to do so. Plaintiffs have been harmed by not having
25 possession of the money identified above, and not being able to invest the money and earn
26 a return.

27 89. Further, Defendants have converted Plaintiffs' Alter interest for themselves
28 by engaging in the fraudulent acts described above, including by refusing to give Wingsail

1 its 65% membership interest in Alter as represented and promised. Defendants simply stole
2 the Alter equity, as neither Wingsail nor Bai, to this date, has received anything from their
3 nearly \$1 Million investment in Alter—no shares, no distribution, no profits, no dividends,
4 and not even a return of Wingsail’s capital or Bai’s promised visa.

5 90. Plaintiffs did not consent to Defendants’ wrongful exercise of dominion over
6 the property.

7 91. As a direct and proximate result of Defendants’ conversion, Plaintiffs have
8 been harmed and suffered damages in an amount to be proven at trial, in an amount at
9 minimum the money described above, but also believed to be in excess of \$30.5 Million
10 in compensatory damages based on valuation of Plaintiffs’ Alter membership interests.

11 92. Defendants undertook the aforesaid illegal acts intentionally and with
12 conscious disregard of the rights of Plaintiffs, and did so with fraud, oppression, and/or
13 malice, as detailed herein. This despicable conduct subjected Plaintiffs to cruel and unjust
14 hardship so as to justify an award of punitive damages in an amount sufficient to deter such
15 wrongful conduct in the future. Therefore, Plaintiffs are also entitled to punitive damages
16 against Defendants in an amount to be determined at trial.

17 93. As a result of Defendants’ conduct as alleged herein, Plaintiffs are entitled to
18 attorneys’ fees, costs, and interest

19 **SEVENTH CLAIM FOR RELIEF**

20 **Theft – Cal. Pen. Code § 4296(c)**

21 **(By Plaintiffs Against All Defendants)**

22 94. Plaintiffs reallege and incorporate by reference herein each and every material
23 allegation of the preceding paragraphs, with the same force and effect as though fully set
24 forth herein.

25 95. Defendants have wrongfully retained possession of Plaintiffs’ money and
26 Alter equity, which they obtained through conduct that constitutes theft and conversion
27 under Penal Code section 496.

28 96. At all relevant times, Defendants knew that the money and Alter equity

1 belonged to Plaintiffs and that they did not have Plaintiffs' consent to use or retain the
2 property. Defendants nonetheless have refused to return the money and Alter equity,
3 despite Defendants' promises and commitments to do so, and Plaintiffs' demands.
4 Defendants therefore have wrongfully obtained property that Defendants know to have
5 been stolen as used in section 496.

6 97. As result of their conduct, Plaintiffs have been denied use of the property and
7 have been damaged in an amount to be proven at trial.

8 98. Pursuant to Penal Code section 496(c), Plaintiffs are entitled to recover three
9 times the amount their actual damages—in this case, three times at minimum the value of
10 the money Plaintiffs delivered to Polsky plus the current value of the Alter equity—and an
11 award of reasonable attorneys' fees, costs, and interest.

12 **EIGHTH CLAIM FOR RELIEF**

13 **Restoration of Property Pursuant to Cal. Civ. Code § 1712**

14 **(By Bai Against All Defendants)**

15 99. Plaintiffs reallege and incorporate by reference herein each and every material
16 allegation of the preceding paragraphs, with the same force and effect as though fully set
17 forth herein.

18 100. Defendants have wrongfully retained possession of Plaintiffs' money and
19 Alter equity, without Plaintiffs' consent or consent by Plaintiffs that was effectively
20 rescinded upon Defendants' actions to take the Alter equity by closing on the Pledge
21 Agreement.

22 101. As direct result Defendants' conduct, Plaintiffs have been denied use of their
23 property and are entitled to restoration of that property, the return of the money detailed
24 above, and compensation for the loss of their use during the time period the property was
25 wrongfully withheld by Defendants.

26 102. Defendants undertook the aforesaid acts intentionally and with conscious
27 disregard of the rights of Plaintiffs, and did so with fraud, oppression, and/or malice, as
28 detailed herein, so as to justify an award of punitive damages in an amount sufficient to

1 deter such wrongful conduct in the future. Therefore, Plaintiffs are also entitled to punitive
2 damages against Defendants in an amount to be determined at trial.

3 103. As a result of Defendants' conduct as alleged herein, Plaintiffs are entitled to
4 attorneys' fees, costs, and interest.

5 **NINTH CLAIM FOR RELIEF**

6 **Unjust Enrichment/ Constructive Trust**

7 **(By Plaintiffs Against All Defendants)**

8 104. Plaintiffs reallege and incorporate by reference herein each and every material
9 allegation of the preceding paragraphs, with the same force and effect as though fully set
10 forth herein.

11 105. Based on the allegations above, Plaintiffs have lost the financial benefit of the
12 investment money tendered to Defendants, as well as the economic value of being 65%
13 owner of Alter.

14 106. Defendants have been unjustly enriched by their wrongful actions, including
15 breach of fiduciary duties, fraud, theft, conversion, and UCL violations.

16 107. Defendants must be declared by this Court to be the involuntary trustees of a
17 constructive trust of all the property wrongfully taken by Defendants.

18 108. As a result of Defendants' conduct as alleged herein, Plaintiffs are entitled to
19 costs and interest.

20 **TENTH CLAIM FOR RELIEF**

21 **Accounting**

22 **(By Plaintiffs Against All Defendants)**

23 109. Plaintiffs reallege and incorporate by reference herein each and every material
24 allegation of the preceding paragraphs, with the same force and effect as though fully set
25 forth herein.

26 110. Polsky owed Plaintiffs fiduciary obligations as detailed above. In breach of
27 said fiduciary duties, among other tortious conduct, Polsky used SEFED to wrongfully
28 deprive Plaintiffs of the value of their investment in Alter as detailed above, making

1 SEFED the owner “on paper” of Plaintiffs’ interests in Alter, and refusing to recognize
2 Plaintiff’s interests or return the money that Plaintiffs had delivered to Polsky to invest in
3 Alter.

4 111. Upon information and belief, SEFED and Polsky, both individually and in his
5 various capacities as an officer, member, and/or owner of SEFED and Alter, orchestrated
6 a deliberate and complex scheme involving the creation and manipulation of multiple
7 limited liability companies and corporate entities designed to obscure and convolute the
8 true ownership and financial status of Alter, thereby making it exceedingly difficult for
9 Plaintiffs and other interested parties to understand the actual equity and management
10 structures. Upon information and belief, said entities include, but are not limited to, Alter
11 Management LLC, Alter Health Group, Inc., Alter Life Sciences, Inc., Alter Life Sciences,
12 LLC, Cambridge Mental Health Management, LLC, Alter Addiction Treatment LLC,
13 Altignis Health LLC, Altignis Campus LLC, California Rehab Campus LLC, Alter Mental
14 Health LLC, Alter Behavioral Health, Alter Behavioral Health—Capistrano Beach, LLC,
15 Alter Mental Heath—Capo Beach, LLC, Alter Mental Health—Dana Point, Dana Point
16 Rehab Campus, LLC, and others unknown currently to Plaintiffs and likely to be identified
17 through discovery. Upon information and belief, Defendants and other individuals and
18 entities have participated in creating the complex financial and corporate structures,
19 including incurring debt and hypothecating and encumbering the property.

20 112. This complex web of entities was created and manipulated by Polsky with the
21 clear intent to hinder, delay, and prevent the discovery by Plaintiffs of his fraudulent
22 activities and breaches of fiduciary duties. By muddying the ownership records and
23 financial dealings of Alter, Polsky sought to complicate any potential legal or financial
24 audits, investigations, or inquiries that might reveal his unauthorized and illicit activities.

25 113. As a direct and proximate result of Defendants’ fraudulent concealment and
26 intentional complexity, Plaintiffs suffered significant financial losses and were deprived of
27 their rightful ownership interests and returns on investment. Defendants’ conduct
28 constitute a clear breach of Polsky’s fiduciary duties owed to Plaintiffs, involving acts of

1 fraud, misrepresentation, and deception that were aimed at personal enrichment at the
2 expense of Plaintiffs and to the detriment of their investments in Alter.

3 114. Under California law, Plaintiffs are entitled to an accounting based on the
4 fiduciary relationships implied and manifested by the business dealings and the complex
5 structure created by Polsky, as well as his direct and indirect management of the invested
6 funds and the entities involved. Plaintiffs have a right to, and in good faith demand, a full
7 accounting from Defendants, including of SEFED since it now holds Plaintiffs' interest in
8 Alter, to ascertain the true financial status of their investments, which are under the direct
9 or indirect control or influence of Polsky and/or the corporations he owns and controls,
10 including SEFED.

11 115. Despite demands, Defendants have failed and refused, and continue to fail
12 and refuse, to provide Plaintiffs with such an accounting, thereby necessitating this action.

13 116. Plaintiffs seek an order from this Court for a complete and thorough
14 accounting of all the financial transactions relevant to their investments in Alter and any
15 other entity controlled or influenced by Defendants related in any manner to Alter, to
16 determine the extent of the funds misappropriated or mismanaged and to facilitate the
17 proper recovery and restitution of these funds.

18 117. As a result of Defendants' conduct as alleged herein, Plaintiffs are entitled to
19 attorneys' fees, costs, and interest.

20 **ELEVENTH CLAIM FOR RELIEF**

21 **Unfair, Unlawful, and Fraudulent Business Practices**

22 **(Cal. Bus. & Prof. Code § 17200 et seq.)**

23 **(By Plaintiffs Against All Defendants)**

24 118. Plaintiffs reallege and incorporate by reference herein each and every material
25 allegation of the preceding paragraphs, with the same force and effect as though fully set
26 forth herein.

27 119. Business and Professions Code section 17200 *et seq.* (the Unfair Competition
28 Law, or "UCL") prohibits any unlawful, unfair, or fraudulent business act or practice.

120. Defendants violated the UCL by engaging in the business acts and practices identified in detail above.

121. As a result of the acts and practices detailed herein, Plaintiffs have incurred an actual injury and been deprived of the money and property identified in this Complaint. To this date, Defendants continue to maintain possession and control of Plaintiffs' property, to the exclusion of Plaintiffs.

122. Plaintiffs have a right under the UCL to have such money and property restored and to disgorge any and all profits obtained by Defendants through their act and practices in violation of the UCL.

123. Unless Defendants are enjoined from continuing to engage in the unlawful, unfair, and/or deceptive business practices outlined herein, Plaintiffs will continue to be injured by Defendants' actions.

124. Plaintiffs seek injunctive relief and restitution for Defendants' violations of the UCL.

125. As a result of Defendants' conduct as alleged herein, Plaintiffs are entitled to attorneys' fees, costs, and interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays that the Court grant judgment against Defendants as follows:

1. Compensatory damages in an amount according to proof at trial;
2. Disgorgement of assets according to proof;
3. Costs, restitution, and multiple damages;
4. Punitive and exemplary damages;
5. Any and all applicable statutory and civil penalties;
6. Restitution in an amount according to proof at trial;
7. Rescission of the following agreements:
 - a. The "Loan and Pledge Agreement" between SEFED and Wingsail, dated August 16, 2019;

b. The “Promissory Note” between SEFED and Wingsail, dated August 16, 2019; and

c. The “Agreement to Accept Collateral In Full Satisfaction of Obligations,” dated April 6, 2020, but backdated to be “effective December 31, 2019”;

8. Preliminary Relief ordering an Accounting of Alter’s books and records to determine Plaintiffs’ ownership.

9. A declaration as requested above;

10. An order enjoining Defendants from dissipation of assets and fraudulent transfer to avoid judgment;

11. Pre- and post-judgment interest on all amounts awarded;

12. Attorneys’ fees and costs;

13. Any further relief this Court deems just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all triable issues.

Date: January 13, 2025

SHEIK LAW, INC.

By: /s/ Mani Sheik
Mani Sheik, Esq.

Attorneys for Plaintiffs Wingsail Holdings,
LLC and Yunfei “Kristy” Bai